

# **EXHIBIT “A”**

Cobo Tr., at 659:5-9

Miami, FL

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1       recollection is that you have some records of the  
2       Cobo Pharmacy that you still have in your  
3       possession, is that right?

4           **A.    Yes.**

5           Q.    And there are records -- the pharmacy  
6       itself had records related to the pharmacy; some  
7       of those went to Eckerd's, which acquired the  
8       pharmacy, is that right?

9           **A.    That's correct.**

10          Q.    And if you think about it now, in terms  
11       of all the records that you have that you  
12       retained for the Cobo Pharmacy, where are those  
13       kept?

14          **A.    I've got some in storage at a room that**  
15       **I kept at what used to be the Cobo Pharmacy**  
16       **building. And I've got some stored in the attic**  
17       **at Ven-A-Care. And thinking about that, I think**  
18       **what I do have access to are my accounting**  
19       **records that would also have, I believe, the**  
20       **breakdown that you're inquiring about.**

21          Q.    Now, you don't have any plans to get  
22       rid of those documents that you have in your

Cobo Tr., at 614:1-14

1           Q.    Let me turn for a bit to the Cobo  
2    Pharmacy.  And the Cobo Pharmacy during -- and  
3    let's take the period 1990 until it terminated,  
4    which I think was in 2000, correct?

5           **A.    Somewhere in the middle, about June of**  
6   **2000, yes.**

7           Q.    So the Cobo Pharmacy was in business in  
8    Key West, Florida, as an independent pharmacy  
9    throughout the '90s and into mid-2000, correct?

10          **A.    That is correct.**

11          Q.    And during that whole period from 1990  
12    to mid-2000, you were the person really  
13    responsible for running it on a day-to-day basis?

14          **A.    That would be correct.**

15          Q.    Just in general, how many customers  
16    would you say that the Cobo Pharmacy had in terms  
17    of its prescription business?

18          **A.    I couldn't give you a number of the**  
19   **customer base; I can give you a range of**  
20   **prescriptions that we would fill. And I would**  
21   **say on, you know, some days, you know, 250 to 300**  
22   **prescriptions; on some days, you know, maybe 50**

Cobo Tr., at 658:22-659:9

Cobo, Luis - Vol. III

July 31, 2008

Miami, FL

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1 ballpark -- any ballpark number as to what that  
2 was?

3 **A ballpark figure may be over a million**  
4 **dollars on prescription items, and there was a --**  
5 **I would say over a million dollars in the last --**  
6 **in the last year. And that may be 1.2 or -- I**  
7 **think that's a reasonable big ballpark figure.**

8 Q. And are there still records that you  
9 have that would show these numbers in some detail  
10 what your revenues were from pharmacy?

11 A. I've got -- I have to check. I've got  
12 some records that have been kept behind. We used  
13 to do a record purge every seven years. And when  
14 we closed, I'm just trying to think what records.  
15 I know we had to move some of our records into  
16 storage, and there were some records that were  
17 purged, you know, just because of the volume in  
18 the storage. You know, I did keep some documents  
19 that I thought would be of interest and personal  
20 things, but I'd have to go back and see. I don't  
21 specifically know.

22 Q. So you -- sitting here today, your best

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1       recollection is that you have some records of the  
2       Cobo Pharmacy that you still have in your  
3       possession, is that right?

4           **A.    Yes.**

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11       of all the records that you have that you  
12       retained for the Cobo Pharmacy, where are those  
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14           **A.    I've got some in storage at a room that**  
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18       **what I do have access to are my accounting**  
19       **records that would also have, I believe, the**  
20       **breakdown that you're inquiring about.**

21          Q.    Now, you don't have any plans to get  
22       rid of those documents that you have in your

Cobo Tr., at 797:13-812:22

797

1 Q. Is there any other instance besides the  
2 one you referenced where you were offered to  
3 receive anything of value from Dey to you in  
4 order to get you to buy Dey's products other than  
5 the instance you just mentioned?

6 MR. BREEN: Objection, form.

7 **A. In other words, you want to know if**  
8 **somebody from Dey came to me and offered me a**  
9 **gift or money or anything of that nature?**

10 Q. Right.

11 **A. Not that I am aware of. Certainly not**  
12 **me.**

13 Q. You testified in an earlier session of  
14 your deposition that at some point in around 2000  
15 when you were closing up or selling the Cobo  
16 Pharmacy, you made a payment of \$40,000 to the  
17 Medicaid program in connection with inflated  
18 reimbursements. Do you recall that?

19 **A. I do.**

20 Q. Okay. And when exactly did you decide  
21 to make that payment?

22 **A. I'd have to go revisit, but I want to**

1       **say either late 2000, early 2001.**

2           Q.    And that payment, how did you come up  
3       with the amount of 40,000?

4           A.    **I testified earlier I had come across**  
5       **some article, and I haven't revisited this, that**  
6       **basically went over again a methodology that had**  
7       **been applied in trying to recover overpayments**  
8       **made to a provider. And I don't recall if it was**  
9       **in the Medicare/Medicaid arena. And I took that**  
10       **information to my accountant at the time, Randy,**  
11       **and told him what I was trying to do. And he**  
12       **helped me sort of fine-tune it based on the**  
13       **information that I had available on how to get a**  
14       **-- reach a more reasonable representation and**  
15       **factor that could be applied -- let me back up --**  
16       **factor based on actual payments that I received**  
17       **from Medicaid and actual invoices that I had from**  
18       **Cobo Pharmacy that I could match to those**  
19       **payments in that point in time.**

20           **And then, using that, determined --**  
21       **accurately determined what the reimbursement**  
22       **should have been and find out -- you know, take**

1 out the dispensing fee that was involved so we  
2 were just dealing with the cost of the drug  
3 product itself. And then used an array of  
4 percentages and applied them to the overall money  
5 that I had been paid on generics. Made a  
6 determination what that was. I was able to do a  
7 sampling; I think I did four years. And then I  
8 took that sampling and applied it to a seven-year  
9 period and came up with an amount that turned out  
10 to be around \$33,000 -- or 35,000, excuse me.  
11 \$35,000. And then added seven percent interest.  
12 And wrote a check to Florida Medicaid and it came  
13 out to about \$40,000.

14 Q. And so you worked on that with Randy  
15 Moore?

16 A. I worked on that by myself. I only  
17 worked with him on the theory of the accounting  
18 principle that should be applied that would --  
19 that would be reasonable and least challenged  
20 under the circumstances. In other words, I  
21 wanted to do something that I had some  
22 professional direction in rather than something

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1       that I would have sat down and tried to figure  
2       out myself and someone might challenge saying it  
3       favors you or it favors -- you know? I wanted to  
4       get a good representation. And it wasn't huge  
5       sums of money we were dealing with. And I just  
6       wanted to ensure the accuracy to the extent that  
7       I could.

8           Q. And before I turn back to how you did  
9       it and follow up on that, what is it that and at  
10       what point -- strike that.

11           What is it that in your own mind  
12       triggered your desire to go forth and figure this  
13       out and pay back some amount?

14           A. Well, um, my involvement with Ven-A-  
15       Care had not been real intimate because I was  
16       either fulfilling the pharmacist consultant role  
17       in that aspect, taking care of those issues, or  
18       when we were just running as an infusion  
19       pharmacy, just working back and forth between  
20       Cobo Pharmacy and Ven-A-Care. So I never really  
21       got fully sensitized and appreciated the issues  
22       in our complaint until I closed down Cobo

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1       Pharmacy and started working more in the, you  
2       know, in the actual data gathering and what have  
3       you.

4               It was an idea that really Zack Bentley  
5       brought to mind, that I was reluctant to do at  
6       first because I felt very confident, comfortable  
7       with my behavior and performance with how I had  
8       billed the Medicaid program in my career at Cobo  
9       Pharmacy. But at the same time, as I fought over  
10      his challenge, it seemed reasonable to think that  
11      I could do something there that would set maybe  
12      an example or at least a tone for the  
13      imperfections of the system that I was dealing  
14      with because of the fraudulent drug prices the  
15      manufacturers had been providing the Medicaid  
16      system.

17           Q.     So what did Mr. Bentley tell you?

18           A.     He just I think briefly indicated you  
19      have a problem with Cobo Pharmacy, you need to  
20      sit down and look at your Medicaid billing. You  
21      know, I was familiar with the concepts there,  
22      and, you know, I understood what he was saying.

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1 Q. Well, when he said "You have a problem  
2 at Cobo," what was your understanding, what was  
3 the problem?

4 A. Well, I think -- I can't speak for him,  
5 and I won't. I felt -- I felt that if I'm going  
6 to be an active participant in this lawsuit, then  
7 certainly I had an obligation to try to, you  
8 know, rectify anything that I had seen that would  
9 -- that has been problematic for the program on a  
10 much, much larger scale. I certainly needed to  
11 at least make an effort to try to minimize what  
12 had happened in my business as a result of that.

13 Q. What is it that Mr. Bentley told you  
14 exactly as to what the problem was that you had  
15 at Cobo?

16 A. Again, I don't know that it was long or  
17 winded. It was just him trying to sensitize me  
18 and do -- that I've got similar issues because,  
19 as we all recognized, I mean, we've -- anybody  
20 who has participated in the Florida Medicaid  
21 program has been a victim, a victim of the  
22 fraudulent billing system that's in place.

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1 Q. Were you -- was Cobo Pharmacy a victim  
2 of the billing system that was in place?

3 A. Well, I think my audit showed that -- I  
4 think I was reaping, you know, some additional  
5 profits that I don't think it's what the Medicaid  
6 program had in mind or intended in trying to base  
7 its reimbursement on estimated acquisition. And,  
8 you know, since I seem to be unique in having  
9 sensitivity to information on the fraudulent drug  
10 reporting practices, I was a lone person in the  
11 country probably that had the ability to go back  
12 and try to rectify, you know, what had  
13 transpired.

14 Q. Did Mr. Bentley ever sit down with you  
15 and go through Cobo records to show you how you  
16 were violating the law from his standpoint?

17 MR. BREEN: Objection to form.

18 A. His feelings on that -- and he was very  
19 adamant -- that this was a Cobo Pharmacy issue.  
20 And as far as he, from Ven-A-Care, was concerned,  
21 he didn't want to participate or have anything to  
22 do with it. He thought it was an internal Cobo

1       **Pharmacy issue that I needed to address.**

2           Q.    And did he tell you that you needed to  
3       address this because otherwise it would look bad  
4       for you in the litigation?

5           MR. BREEN:   Objection, form.

6       **A.    I don't know that -- that may have been**  
7       **the inference and the concern. As I said, it**  
8       **wasn't anything that neither he or I expressed**  
9       **that needed to be mandatory. I looked at it as**  
10       **an exercise that would allow me certainly to be**  
11       **more comfortable with -- with the practices that**  
12       **transpired at Cobo Pharmacy, my involvement in**  
13       **the program.**

14           Q.    And at -- Did Mr. Bentley first bring  
15       this up to you; is that how it first started?

16       **A.    I think that's correct. I think the**  
17       **notion, the idea, the challenge was first**  
18       **introduced by Zack Bentley, yes.**

19           Q.    And when was that?

20       **A.    Here again, in a general time frame, I**  
21       **don't know if it was late 2000; that might be**  
22       **reasonable. But I'd have to go back and see the**

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1        **dating on the documents and see. You know, the -**  
2        **- the project itself took several months, and I**  
3        **just don't recall if it's something that began in**  
4        **late 2000 or early 2001.**

5           Q. And did you -- when you say the project  
6        took several months, was there -- were there  
7        records that -- notes, spreadsheets that were  
8        created as you were working your way through this  
9        project to get to the amount that you would pay?

10          A. **Yeah, I was trying to turn up my -- my**  
11        **Medicare -- Medicaid, excuse me, claim forms. I**  
12        **was trying to go through my files that I had that**  
13        **either had been preserved. I -- and pulled**  
14        **invoices, primarily from McKesson and secondarily**  
15        **from, you know, Bergin Gulf or Bergin Brunswick.**  
16        **So each one of those tasks was something because**  
17        **it was a lot of stuff that was in storage and,**  
18        **you know, boxes that needed to be taken down and**  
19        **taken apart and all that information gathered and**  
20        **going through it one by one, line item by line**  
21        **item.**

22           Q. And -- and do you have all the work

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1 papers that were part of this project to come up  
2 with the \$40,000 payment?

3 **A. Um, the original work papers I do not**  
4 **have.**

5 Q. Where are they?

6 A. **That was turned over to Mr. Breen.**

7 Q. When?

8 A. **I don't know, possibly late last year.**

9 MR. ESCOBAR: Do you know --

10 A. **Late last year --**

11 MR. ESCOBAR: Do you know, Jim, whether  
12 those have been produced?

13 MR. BREEN: I don't think they've been  
14 requested.

15 MR. ESCOBAR: Well, we would like all  
16 the work papers, every scrap of paper that  
17 relates to this project.

18 MR. BREEN: We'll address it at the  
19 appropriate time.

20 MR. ESCOBAR: Now -- It's okay.

21 MR. BREEN: Have you guys requested  
22 these things before today?

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1 MR. GORTNER: I would have to look over  
2 my document request. I think -- I will let you  
3 know for sure.

4 MS. ST. PETER-GRIFFITH: Cobo Pharmacy  
5 is a third-party, isn't it? It would have to be  
6 a subpoena.

7 MR. BREEN: We can address it. I'm  
8 just saying that I don't think that it's been  
9 requested.

10 MR. ESCOBAR: Well, we're going to send  
11 a subpoena that calls for every document that  
12 relates to the Cobo Pharmacy that either he or  
13 you guys have, whatever it is.

14 MR. BREEN: Then we can deal with a  
15 subpoena, which has its own issues associated  
16 with it.

17 MR. ESCOBAR: But was -- the work  
18 papers on those \$40,000, if you want, we'll put  
19 that in a specific request.

20 BY MR. ESCOBAR:

21 Q. Now, did -- after you did this project  
22 and came up with the number, did you come to the

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1 conclusion, Mr. Cobo, that you had defrauded the  
2 Medicaid program?

3 **A. No, I came to the conclusion that**  
4 **because of the fraudulent pricing that was in**  
5 **place by the manufacturers and being utilized by**  
6 **the State of Florida Medicaid system, I somewhat**  
7 **had been victimized as well.**

8 Q. Oh, so -- so you made the payment of  
9 \$40,000 because you had concluded that you were a  
10 victim of the fraud --

11 MR. BREEN: Objection, form.

12 Q. -- is that right?

13 **A. You asked me earlier if I thought --**  
14 **I'll have to go back -- if I had been defrauded,**  
15 **I believe?**

16 Q. No. My question was: After you did  
17 the project and you reviewed it and you came to  
18 the conclusion that you should pay money back to  
19 Medicaid, as doing -- in doing that, did you  
20 conclude that you had been overpaid by Medicaid?

21 MR. BREEN: Objection, form.

22 **A. I don't know that I would classify it**

1 as I felt that I had been overpaid by Medicaid.  
2 I think that I had been paid appropriately by  
3 Medicaid based on the formulations and the  
4 reimbursement methodology. I think that I had  
5 been unfairly overreimbursed because that  
6 methodology is based on fraudulent prices that  
7 are given them by the manufacturers. So, you  
8 know, I didn't feel that I was overpaid; I just  
9 thought that I wasn't participating in the  
10 reimbursement program with what I thought was the  
11 real intent of -- of Florida Medicaid.

12 Q. But you didn't --

13 A. That's why I made that -- that refund.

14 Q. Did you conclude that you had done  
15 anything wrong?

16 A. I did not feel that I had done anything  
17 wrong, no.

18 Q. And did the \$40,000 that you came up,  
19 after the project, the exercise that you  
20 described, did you view that as the full  
21 compensation to Medicaid that you felt that Cobo  
22 Pharmacy should make?

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1           A. Again, I -- that represented over a  
2 period of, and I believe seven years, and as  
3 accurately as I could -- I could determine, I  
4 think that represented what I saw was the  
5 overcompensation as a result of the system. And  
6 I feel somewhat, you know, comfortable with that  
7 figure. A bulk of the drug products that account  
8 for the monies that I'm reimbursed for in  
9 Medicaid were actually from brand products. You  
10 know, with the brand products, the reimbursement  
11 actually has some validity and integrity. It's  
12 only in the generic world where these spreads and  
13 what have you incorrectly apply the intent of the  
14 system, I think.

15           Q. And, now, as you were doing the  
16 calculation of the 40,000, did you -- as part of  
17 that analysis, did you come up with a -- an  
18 amount that you thought was an appropriate spread  
19 or differential that you would keep?

20           MR. BREEN: Objection to the form.

21           A. I wouldn't -- I think in my analysis, I  
22 tried to determine a factor that would represent

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1       an overpayment amount that would reflect an  
2       accurate WAC-based reimbursement, wholesale or  
3       acquisition costs, you know, plus a percent and  
4       dispensing fee, rather than an AWP figure that  
5       was, you know, totally unrelated and detached  
6       from the WAC. No relationship.

7           Q. So the 40,000 was to some extent a  
8       product of trying to figure out the difference  
9       between what you would have gotten on an AWP  
10      reimbursement as against the WAC reimbursement?

11           MR. BREEN: Objection to form.

12           A. The 40,000, as best I recall, was the  
13       difference. Once I -- once I subtracted the  
14       dispensing fee, because that doesn't change,  
15       between what Florida Medicaid reimbursed me and  
16       what I calculated to be the more accurate  
17       reimbursement, which would have been my  
18       acquisition cost plus -- plus seven percent, that  
19       difference is what I figured after getting a  
20       factor and applying it to all my generics across  
21       the board.

22           Q. And your acquisition cost plus seven

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1 percent, as you understood that, that would be  
2 the wholesale acquisition cost plus seven  
3 percent?

4 **A. That is correct.**

5 Q. So even as you were doing -- as you  
6 were doing this exercise, you thought that a  
7 reimbursement that was based on a wholesale  
8 acquisition cost plus seven percent, that that  
9 was a fair reimbursement, is that right?

10 MR. BREEN: Objection, form.

11 **A. I didn't have an opinion on whether it**  
12 **was a fair reimbursement. I was just trying to**  
13 **do that to accurately reflect I think the**  
14 **parameters that were in place. I don't know that**  
15 **I went into it with an opinion of whether I**  
16 **thought it was fair or not.**

17 Q. Now, is that -- is the \$40,000 the only  
18 payment that you made -- that you made to  
19 Medicaid in connection with what you thought had  
20 been overreimbursement?

21 **A. I believe that is correct.**

22 Q. Now, at -- at one of the earlier

Cobo Tr., at 815:1-825:4

815

1 Q. And 181, as I understand it, this was  
2 something that was produced to us in the Florida  
3 case. And as I understand it, this is a file on  
4 the Cobo Pharmacy in the Florida Medicaid  
5 program. And let me -- first of all, have you  
6 ever seen this before?

7 **A. No, I can't say that I have. Parts of**  
8 **it obviously I have because I filled it out.**

9 Q. Right.

10 **A. But there are parts that I am not**  
11 **familiar with, but certainly parts that I am**  
12 **familiar with because it's various signing of**  
13 **contracts and information on the pharmacy and**  
14 **application it looks like and files with**  
15 **licensure information.**

16 Q. The Exhibit 181 has Bates numbers FL-  
17 AG-0002871 through 2970. Turn, if you would, to  
18 Page 2874.

19 **A. Okay.**

20 Q. And this is a memorandum at ACHA dated  
21 September 16th, 2002. And it's signed by a  
22 couple of people at -- in the Medicaid program.

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1 And it relates to Cobo Pharmacy. And attached to  
2 it is a final report of a pharmacy audit that was  
3 conducted by an outfit called Heritage. Do you  
4 remember that audit?

5 **A. I believe so. I believe so. But it's**  
6 **been a while since I've had to think about it,**  
7 **but I believe I remember this audit.**

8 Q. Were you -- were you notified -- take a  
9 look at Page 2876 which has the pharmacy audit  
10 final report.

11 **A. Yes.**

12 Q. And you see that there is -- the  
13 results of the audit are indicated there. And it  
14 indicates that, based on the audit, there are  
15 total recommended recoveries from Cobo of  
16 \$374,476.56. Do you see that?

17 **A. I do.**

18 Q. And that that was a result of 139  
19 discrepancies in the -- found by the audit. Do  
20 you see that?

21 **A. I do.**

22 Q. Have you seen this before?

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1           **A.    No.**

2           Q.    Did you ever pay Florida Medicaid  
3           \$374,476.56 for these discrepancies?

4           **A.    No.**

5           Q.    Now, none of these discrepancies that  
6           are listed here relate to you being paid more  
7           than you should have been on reimbursement, do  
8           they?

9           **A.    I'm not -- I'm not familiar with this**  
10           **audit in particular at all.**

11           Q.    Did Florida Medicaid ever ask you to  
12           pay them this amount?

13           **A.    No.   This is dated October 26 of 2000.**  
14           **I didn't even have the pharmacy at that time.**

15           Q.    So is this the first time that you've  
16           seen this?

17           **A.    Uh-huh.**

18           Q.    Yes?

19           **A.    Yes.**

20           Q.    Well, did you know that you owe Florida  
21           Medicaid \$374,000?

22           MR. BREEN:   Objection to the form.

1 MS. ST. PETER-GRIFFITH: Objection to  
2 the form.

3 MR. ESCOBAR: That's what it says.

4 MR. BREEN: That's not what it says.

5 MS. ST. PETER-GRIFFITH: Object to the  
6 form.

7 MR. ESCOBAR: I would suggest that you  
8 go and get that money back for Florida Medicaid.

9 MR. BREEN: You know, if you're going  
10 to be commenting on the record, I suggest you  
11 read the whole thing where it indicates -- they  
12 did this at Eckerd's Pharmacy. Cobo wasn't  
13 present. And they couldn't get into the computer  
14 system due to the Y2K problem, so --

15 MR. ESCOBAR: So it could be more.

16 MR. BREEN: -- that might be why they  
17 didn't submit it to Mr. Cobo. So my suggestion  
18 is do not misrepresent this on the record.

19 MR. ESCOBAR: I'm not misrepresenting  
20 anything.

21 MS. ST. PETER-GRIFFITH: You are. Yes,  
22 you are.

Cobo, Luis - Vol. III

July 31, 2008

Miami, FL

819

1                   MR. ESCOBAR: It says total recommended  
2 recoveries: \$374,476.95 --and 56 cents.

3                   MR. BREEN: Based upon plugging -- this  
4 is the first I've seen it. Based upon plugging  
5 and chugging, based upon an inability to get into  
6 a computer system. Where Mr. Cobo was never even  
7 notified about this.

8                   THE WITNESS: No, this is -- this is  
9 without a doubt challengeable. I don't know what  
10 this indicates, and I don't know -- I can't -- at  
11 this point in time, Eckerd Drugs had -- had the  
12 records. And if this is based on discrepancies  
13 because there was a problem with the records, um,  
14 that's not -- you know, they -- that's -- I don't  
15 see that being a Cobo Pharmacy issue.

16                  I had been audited before that. This  
17 is audit time period 6/24/1998 to 5/26/2000.

18 BY MR. ESCOBAR:

19                  Q. In that entire audit period, you owned  
20 Cobo Pharmacy, right?

21                  MS. ST. PETER-GRIFFITH: And he never  
22 received notice of this.

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1 MR. ESCOBAR: I'm not asking you any  
2 questions, so -- if you have an objection, so  
3 object --

4 MS. ST. PETER-GRIFFITH: I object.

5 MR. ESCOBAR: -- otherwise, I don't  
6 want to hear you.

7 MS. ST. PETER-GRIFFITH: Well, if  
8 you're going to misrepresent things.

9 MR. BREEN: But, Counsel, if you're  
10 going to misstate this document.

11 MR. ESCOBAR: I'm not misrepresenting  
12 anything.

13 MR. BREEN: You're misrepresenting the  
14 document. And if you're going to misrepresent a  
15 document and make those kinds of accusations --

16 MR. ESCOBAR: I am not making any  
17 accusations. This is in the document.

18 MR. BREEN: Never -- you're misstating  
19 the document, Counsel, so I'll assert my  
20 objections as appropriate.

21 Plus, as a matter of fact, I don't ask,  
22 I demand, this witness will not answer one more

821

1 question about this until he takes the time to  
2 read every page.

3 MR. ESCOBAR: Okay. Go ahead.

4 MR. BREEN: That way he doesn't have to  
5 sit here and let you mischaracterize the  
6 document.

7 MR. ESCOBAR: Go ahead. Go ahead.

8 MR. BREEN: So we're going to take a  
9 break right now and you can review the document.

10 MR. ESCOBAR: Fine.

11 THE VIDEOGRAPHER: Going off the  
12 record. The time is 3:31.

13 (A recess was taken from 3:31 to  
14 3:39 p.m., after which the following proceedings  
15 were had:)

16 THE VIDEOGRAPHER: Going back on the  
17 record. The Videotape Number 6. The time is  
18 3:39.

19 BY MR. ESCOBAR:

20 Q. Mr. Cobo, have you had a chance to  
21 review the portions of 181 that you wanted to  
22 look at or your counsel wanted you to look at?

822

1 MR. BREEN: Before proceeding, I've got  
2 a question. This ACHA document, State of Florida  
3 Agency for Healthcare Administration, which bears  
4 a Florida AG Bates number on it, and which I -- I  
5 will represent on the record that I've seen for  
6 the first time today and specifically states a  
7 finding of no abuse was made and the file was  
8 closed. I'll ask if this document was ever  
9 produced in this case?

10 MR. ESCOBAR: I think --

11 MR. BREEN: Was it ever produced to  
12 Ven-A-Care in another case, to your knowledge?

13 MR. ESCOBAR: I think this is a  
14 document produced by Florida, your client.

15 MR. BREEN: My client is not Florida.

16 This --

17 MR. ESCOBAR: Well --

18 MR. BREEN: This document was produced  
19 by the Florida attorney general.

20 MR. ESCOBAR: That's my understanding.

21 MR. BREEN: But it's not a document  
22 that you either put on a disclosure or otherwise

823

1 provided in the instant case until today, is that  
2 correct?

3 MR. ESCOBAR: I don't know that. I  
4 don't know if it's ever been requested; I don't  
5 know that you've ever asked for documents like  
6 this.

7 MS. ST. PETER-GRIFFITH: But you've  
8 never made an initial disclosure in this case?

9 MR. ESCOBAR: I don't know.

10 MR. BREEN: But I just want to make  
11 sure the question that you were asking him. When  
12 you were representing on the record that he owes  
13 \$374,000, you were talking about the same audit  
14 which specifically was closed with a no abuse  
15 finding, correct? Is that the audit you're  
16 talking about?

17 MR. ESCOBAR: There's a note of  
18 reference here and there's a recommendation that  
19 says: Close the case with no abuse.

20 MR. BREEN: Okay. That's the one  
21 you're talking about, right?

22 MR. ESCOBAR: That's the one that's in

824

1 here.

2 MR. BREEN: Okay. I just want to make  
3 sure that the record is clear that when we read  
4 back your question and your representation on the  
5 record, that you weren't mistaken and you were in  
6 fact talking about one you were looking at that  
7 specifically said: Close the file with a no  
8 abuse finding. I just want to make sure the  
9 record is clear.

10 MR. ESCOBAR: Look, there could be a  
11 lot of investigations that you guys have done or  
12 some other people have done of your clients that  
13 I am not aware of.

14 MR. BREEN: I just want to make sure --  
15 MR. ESCOBAR: That's highly possible.

16 MS. ST. PETER-GRIFFITH: That's an  
17 improper -- improper statement, and you know it,  
18 Mr. Escobar.

19 MR. BREEN: Counsel, I just want to  
20 make -- if for some reason I am mistaken and you  
21 weren't talking about a document that  
22 specifically found no abuse when you made that

825

1 representation, I wanted you to be able to  
2 correct it on the record. But since we're  
3 talking about the same one, the record is clear,  
4 we can go on.

5 MR. ESCOBAR: Are you done?

6 MR. BREEN: I'm done. And we've got an  
7 hour and fifteen minutes more of this deposition

8 --

9 MR. ESCOBAR: Oh good.

10 MR. BREEN: -- and then it's over.

11 MR. ESCOBAR: Okay.

12 MR. BREEN: So I don't know if Mr.  
13 Gortner's got questions.

14 MR. ESCOBAR: Well, we'll work it --  
15 we'll work it out amongst ourselves, right?

16 MR. BREEN: Well, you better work it  
17 out fast because we told you before the  
18 deposition --

19 MR. ESCOBAR: Yeah.

20 MR. BREEN: -- that you guys need to  
21 coordinate this thing. And I'm not staying here  
22 and we're not putting him up for more repetitious

Cobo Tr., at 827:3-9

827

1 appropriate.

2 BY MR. ESCOBAR:

3 Q. Did you have any conversations, Mr.  
4 Cobo, with Florida Medicaid or Medicaid Program  
5 Integrity regarding the audit that's referenced  
6 in Exhibit 181?

7 **A. This is the absolute first time I see**  
8 **this. I have had no conversations with anybody**  
9 **regarding this.**

10 Q. And this -- you read the document which  
11 references also the \$40,000 check that you sent?

12 **A. Let me see.**

13 Q. It's at the bottom of Page --

14 **A. I saw the \$40,000 figure, but I didn't**  
15 --

16 Q. Page 2874. You see where it says:  
17 "However Medicaid Program Integrity received a  
18 \$40,000.00 check from Cobo Pharmacy on October  
19 12th, 2001 for a self-audit and opened C.I. 01-  
20 1769-000 on October 29th, 2001." You see that?

21 **A. Yes, on the same paragraph where it**  
22 **states that: The instructions from the Chief of**

Cobo Tr., at 835:10-842:5

835

1 auditors have determined a total calculated  
2 overpayment of \$472,568.91, right?

3 **A. Correct.**

4 Q. And then they deducted that from the  
5 amounts paid to Cobo Pharmacy on the claims --

6 **A. Right.**

7 Q. -- to come up with a total recommended  
8 recovery, right?

9 **A. Uh-huh.**

10 Q. So the auditors who conducted this  
11 audit for Florida Medicaid reached a total  
12 recommended recovery of \$374,476.56, right?

13 MR. BREEN: Objection to form.

14 **A. Yes.**

15 Q. Okay. All right, now -- and then  
16 attached to the audit -- pharmacy audit report is  
17 a discrepancy listing random sample and it has  
18 item by item for several pages, right?

19 **A. Yeah.**

20 Q. Okay. Now, and then in the memo --

21 **A. May I -- you went over one page, and**  
22 **while we're still on the pharmacy audit final**

836

1 report introduction, I guess those first two  
2 pages --

3 Q. The memo?

4 A. Yes. I would like to comment that to  
5 me it is absurd to accept the premise that  
6 roughly almost two-thirds of the claims that I  
7 have submitted to Florida Medicaid over that  
8 period of time had discrepancies. I would -- I  
9 wish I had been, and I should have been, involved  
10 in this. The conclusion on the back about the  
11 Y2K unreliability of the computer is bogus. When  
12 I turned that computer over, it was fully  
13 functioning, and it had all the information in  
14 there and probably in about three of the relevant  
15 years of this particular audit and certainly  
16 could have been used for a backup to access any  
17 prescription information and billing information.

18 And I will also represent that the --  
19 that the auditors were directed to the -- let me  
20 read it for you into the record. Cobo Pharmacy  
21 records -

22 Q. Where are you reading? Just so --

837

1           **A. I'm on Page 2 --**

2           Q.     This is --

3           **A. -- of FL-AG-0002877.**

4           Q.     Okay. And this is the --

5           **A. The comments. The notes.**

6           Q.     The comments section of the Pharmacy  
7     Audit Final Report that's attached to the  
8     memorandum for the record by the Florida Agency  
9     for Healthcare Administration under the  
10    letterhead of ACHA with Jeb Bush as the governor  
11    and Rhonda Medows as the secretary, right?

12           MR. BREEN: No, that's not what it is  
13    at all.

14           THE WITNESS: That's not where I am. I  
15    don't know what --

16           MR. BREEN: He's on Page 2 of the audit  
17    that you went through the first page of and did  
18    not go to the second page.

19           MR. ESCOBAR: Right and that's attached  
20    to the memo.

21           MR. BREEN: Correct.

22           MR. ESCOBAR: Okay. All right, let's

838

1 go through that second page. You're getting --

2 MR. BREEN: The witness was in the  
3 middle of making a --

4 THE WITNESS: I'm in the middle of --  
5 since you had breezed past it, I would like to  
6 address it.

7 MR. ESCOBAR: Okay, well, I hadn't  
8 finished, but go ahead since you want to go  
9 through it.

10 THE WITNESS: Okay. It only seemed  
11 that that would have been the next logical, you  
12 know, after two would have been number three.

13 MR. ESCOBAR: We hadn't -- we hadn't  
14 passed Number 2.

15 THE WITNESS: I also have a problem  
16 with each paragraph. The audit checked from  
17 records which were bought from Eckerd's on  
18 5/31/2000, and Cobo Pharmacy is no longer in  
19 operation. The previous owner was not on site  
20 during the audit.

21 I was easily available, as they had my  
22 address here at Ven-A-Care and could have

839

1 informed me. I would have been more than happy  
2 to participate and help them read through this.

3 "The Eckerd pharmacist on duty directed  
4 the auditors to the Cobo Pharmacy records stored  
5 away from the Eckerd Pharmacy area."

6 Normally, when an auditor is going  
7 through records, I would assist them because  
8 there's always times when an auditor has problems  
9 and there are things that are inherent in filing  
10 and cataloging hard copies that occur in a  
11 pharmacy -- in a pharmacy recordkeeping system.  
12 And they're easily retrievable because they are  
13 separated by the types of prescriptions. And  
14 oftentimes the Medicaid prescriptions you try to  
15 separate and segregate, but sometimes they do  
16 find themselves into the regular files.

17 The second paragraph about the Y2K  
18 problem is totally bogus. That prescription  
19 computer was working totally operational and  
20 functioning until the last day it was at Cobo  
21 Pharmacy.

22 The third paragraph. "The Cobo

840

1 Pharmacy records were audited." "Of the 225  
2 records in the sample, 139 could not be located.  
3 The auditors employed a double check system to  
4 avoid overlooking prescriptions." I don't know  
5 what that is.

6 "It is noteworthy that the filing  
7 system is not accurate. For example, there were  
8 instances in which the prescription numbers  
9 marked on the outside of the spindle boxes did  
10 not match the prescriptions filed inside."

11 To that I could address that of all the  
12 many prescription boxes that were had, those were  
13 accurately kept. If things had been taken out of  
14 those boxes and looked at, gone through,  
15 whatever, by somebody else in possession of those  
16 prescriptions and not accurately put back into  
17 the proper boxes, that may in fact be the case.  
18 But while they were at Cobo Pharmacy, we had a  
19 storeroom full of those boxes that we often had  
20 to access. And I don't know if you're familiar  
21 with the recordkeeping, you know, Bates numbers  
22 on prescriptions, but each box would hold

841

1 approximately, let's say for the sake of  
2 argument, 500 prescriptions. And on the outside  
3 of that box, the prescription number beginning on  
4 such and such -- prescription number on such and  
5 such a date and ending on such-and-such a  
6 prescription number on such and such a date.

7 So a pharmacist could retrieve that  
8 box. And if we had to refer the original hard  
9 copy, which was often the case, it was easily  
10 available and retrievable. So I don't know where  
11 that -- that mix-up of boxes came through.

12 Also the -- "None of the prescriptions  
13 were filed in true numerical order." I don't  
14 know what that is, but prescriptions have to be  
15 filed in numerical order. If you have to use,  
16 retrieve, you have to participate in an audit  
17 that is vital. And I've been through many audits  
18 in Cobo Pharmacy, whether it's Medicaid, private  
19 insurance audits and have never had a problem  
20 like this occur. So I don't know what's happened  
21 there, what the issue is. I don't know why I  
22 wasn't called to help the auditors go through

842

1 this -- this problem and explain perhaps what was  
2 going on or what -- what their issue was, but I  
3 thought that needed to be addressed.

4 Q. Did you ever meet Kenneth Yon?

5 **A. No.**

6 MR. ESCOBAR: Thanks, Mr. Cobo. That's  
7 all I have for you. We will reserve our rights  
8 to call the witness again.

9 MR. GORTNER: Off the record a second.

10 THE VIDEOGRAPHER: Going off the  
11 record. The time is 3:58.

12 (A recess was taken from 3:58 to  
13 4:04 p.m., after which the following proceedings  
14 were had:)

15 THE VIDEOGRAPHER: Back on the record.  
16 The time is 4:04.

17

18 EXAMINATION

19 BY MR. GORTNER:

20 Q. Good afternoon, Mr. Cobo. As you know,  
21 my name is Eric Gortner, and I represent Roxane  
22 Laboratories. And, as you know, Ven-A-Care filed

Cobo Tr., at 838:15-842:3

838

1 go through that second page. You're getting --

2 MR. BREEN: The witness was in the  
3 middle of making a --

4 THE WITNESS: I'm in the middle of --  
5 since you had breezed past it, I would like to  
6 address it.

7 MR. ESCOBAR: Okay, well, I hadn't  
8 finished, but go ahead since you want to go  
9 through it.

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11 that that would have been the next logical, you  
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